

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

SCOTT HUNT,

Plaintiff,

v.

CITY OF MONTGOMERY and

KEVIN J. MURPHY,

Defendants.

Case No: 2:05 –cv-01160-T

ANSWER OF DEFENDANTS,
CITY OF MONTGOMERY AND KEVIN J. MURPHY

Defendants, by and through undersigned counsel, in answer to the Complaint filed in the above case, state the following:

JURISDICTION AND VENUE

1. Defendants admit that jurisdiction is proper in this Court. Defendants deny the remaining allegations in paragraph 1 of Plaintiff's Complaint and demand strict proof thereof.

2. Defendants admit that the City of Montgomery is a municipal corporation located in Montgomery County, Alabama and that Montgomery County is within the Northern Division of the Middle District of Alabama. Defendants deny the remaining allegations in paragraph 2 of Plaintiff's Complaint and demand strict proof thereof.

PARTIES

3. Admitted.

4. Admitted.

5. Defendants admit that Defendant Murphy is over the age of majority, employed with the City of Montgomery, a citizen of the State of Alabama and the United States. Defendants deny the remaining in paragraph 5 of Plaintiff's Complaint and demand strict proof thereof.

NATURE OF PROCEEDINGS

6. Defendants deny the allegations in paragraph 6 of Plaintiff's Complaint and demand strict proof thereof.

7. Defendants deny the allegations in paragraph 7 of Plaintiff's Complaint and demand strict proof thereof.

8. Defendants deny the allegations in paragraph 8 of Plaintiff's Complaint and demand strict proof thereof.

9. Defendants deny the allegations in paragraph 9 of Plaintiff's Complaint and demand strict proof thereof.

10. There is no paragraph 10 in Plaintiff's Complaint.

11. Defendants deny the allegations in paragraph 11 of Plaintiff's Complaint and demands strict proof thereof.

12. Defendants deny the allegations in paragraph 12 of Plaintiff's Complaint and demands strict proof thereof.

13. Defendants deny the allegations in paragraph 13 of Plaintiff's Complaint and demands strict proof thereof.

FACTS

14. Defendants hereby adopt and incorporate their answers and responses to paragraphs 1 through 13 of Plaintiff's Complaint as if fully set out herein.

15. Admitted.

16. Admitted.

17. Admitted.

18. Defendants deny the allegations in paragraph 18 of Plaintiff's Complaint and demand strict proof thereof.

19. Defendants deny the allegations in paragraph 19 of Plaintiff's Complaint and demand strict proof thereof.

20. Admitted.

21. Admitted.

22. Defendants deny the allegations in paragraph 22 of Plaintiff's Complaint and demand strict proof thereof.

23. Defendants are without sufficient knowledge to either admit or deny the allegation set forth of paragraph 23 of Plaintiff's Complaint and therefore, deny the allegations and demand strict proof thereof.

24. Defendants deny the allegations in paragraph 24 of Plaintiff's Complaint and demand strict proof thereof.

25. Defendants deny the allegations in paragraph 25 of Plaintiff's Complaint and demand strict proof thereof.

26. Defendants deny the allegations in paragraph 26 of Plaintiff's Complaint and demand strict proof thereof.

27. Defendants deny the allegations in paragraph 27 of Plaintiff's Complaint and demand strict proof thereof.

28. Defendants admit that Plaintiff Hunt resigned from the Montgomery Police Department but deny the remaining allegations in paragraph 28 of Plaintiff's Complaint and deny strict proof thereof.

29. Defendants deny the allegations in paragraph 29 of Plaintiff's Complaint and demand strict proof thereof.

CAUSES OF ACTION

30. Defendants hereby adopt and incorporate their answers and responses to paragraphs 1 through 29 above as if fully set out herein.

COUNT I – RETALIATION

31. Defendants deny the allegations set forth in paragraph 31 of Plaintiff's Complaint and demand strict proof thereof.

32. Defendants admit that freedom of speech is a protected First Amendment right, but deny that Plaintiff's rights were violated and demand strict proof thereof.

33. Defendants deny the allegations in paragraph 33 of Plaintiff's Complaint and demand strict proof thereof.

34. Defendants deny the allegations in paragraph 34 of Plaintiff's Complaint and demand strict proof thereof.

35. Defendants deny the allegations in paragraph 35 of Plaintiff's Complaint and demand strict proof thereof.

36. Defendants deny the allegations in paragraph 36 of Plaintiff's Complaint and demand strict proof thereof.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendants assert that the Complaint fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Defendants deny that Plaintiff is entitled to any relief.

THIRD AFFIRMATIVE DEFENSE

Defendants plead the general issue.

FOURTH AFFIRMATIVE DEFENSE

Defendants deny all material allegations not specifically admitted and demand strict proof thereof.

FIFTH AFFIRMATIVE DEFENSE

Defendants assert that Plaintiff has failed to state injuries or damages caused by Defendants which violated Plaintiff's constitutional rights or for which any relief can be granted.

SIXTH AFFIRMATIVE DEFENSE

Defendants assert that Plaintiff has failed to any custom or policy of Defendants which violated Plaintiff's constitutional rights or for which any relief can be granted.

SEVENTH AFFIRMATIVE DEFENSE

Defendants plead substantive, qualified and/or discretionary function immunity.

EIGHTH AFFIRMATIVE DEFENSE

Defendants plead the Alabama statutory monetary caps on punitive damages.

NINTH AFFIRMATIVE DEFENSE

Defendants assert that Plaintiff was guilty of negligence, wantonness, recklessness and

intentional or criminal acts which proximately caused or contributed to the injuries or damages he claims.

TENTH AFFIRMATIVE DEFENSE

Defendants assert state actor immunity pursuant to Article 1 § 14, Constitution of Alabama (1901).

ELEVENTH AFFIRMATIVE DEFENSE

To the extent applicable, Defendants plead the statute of limitations.

TWELFTH AFFIRMATIVE DEFENSE

To the extent applicable, Defendants plead estoppel, waiver and laches.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendants assert that Plaintiff is not entitled to punitive damages and that the award of punitive damages would violate the Fourth, Fifth, Sixth, Eleventh and Fourteenth Amendments of the Constitution of the United States and Article 1 §§ 6, 10, 11, 15, 22, 35, 36 and 43 of the Constitution of Alabama (1901).

RESERVATION OF DEFENSES

Defendants reserve the right to plead additional defenses as they become known in the course of discovery.

Submitted this 4th day of January, 2006

/s/Kimberly O. Fehl
Kimberly O. Fehl (FEH001)

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing *Answer of Defendants* by electronic mail or causing it to be placed in the U.S. Mail, postage prepaid, on this the 4th day of January, 2006, properly addressed to the following:

Jay Lewis, Esq.
Law Offices of Jay Lewis, L.L.C.
P.O. Box 5059
Montgomery, AL 36103

/s/Kimberly O. Fehl
OF COUNSEL